

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	No. 63269-8-I
)	
Respondent,)	DIVISION ONE
)	
v.)	UNPUBLISHED OPINION
)	
ROYA SARDARPOUR,)	
)	
Appellant.)	FILED: July 19, 2010

Grosse, J. — A defendant in a theft case is not entitled to an instruction on the defense of a good faith claim of title where, as here, the evidence does not establish that the defendant took property openly and avowedly. Thus, counsel's failure to request the instruction does not amount to ineffective assistance. Accordingly, we affirm.

FACTS

In 1999, Roya Sardarpour was hired by siblings Paul, Pam and Craig Bekins to care for their aging father. After their father died in 2000, the family asked Sardarpour to continue working as a companion and caregiver for their 84-year-old mother, Evelyn Bekins.¹ Sardarpour worked five days a week for Evelyn, cooking, taking her to appointments and providing general care.

During this time, Evelyn received about \$200,000 annually from the family business, Bekins Moving and Storage. Evelyn had never handled her own finances and after the death of her husband, her son Paul took over management of her

¹ To avoid confusion, members of the Bekins family will be referred to by their first names.

finances. Over time, Paul entrusted Sardarpour to handle Evelyn's bills. By January 2004, Sardarpour was handling 80 to 90 percent of Evelyn's finances, with Paul periodically reviewing her check register and an occasional bill.

Sardarpour was paid for her services out of Evelyn's checking account. She was paid by check for an amount calculated by Paul, which was based on the number of hours she reported to him. According to Sardarpour, Paul would also reimburse her for expenses for Evelyn that Sardarpour put on her own credit card.

Sometime around Thanksgiving 2004, Paul, Pam and Craig noticed an unusual charge to Home Depot on their mother's account. When they asked Sardarpour about it, she claimed that she had used the mother's credit card by mistake for this purchase and agreed to repay them. The family also noticed purchases on their mother's Nordstrom account for baby clothes, to which Sardarpour admitted to making. According to Paul, Sardarpour did not have permission to use Evelyn's credit cards.

Around December 22 or 23, 2004, Evelyn became ill and was hospitalized. During this time, Paul decided to take a closer look at her finances. He discovered several purchases from her account for new clothing, shoes and food that seemed suspicious and could not locate any of these purchased items in the house. While Evelyn was still hospitalized, Paul and his siblings confronted Sardarpour about the charges and terminated her employment. Sardarpour explained that she "had some issues" and stated, "This won't need to go to the police. We'll be able to work through it." When the siblings told Evelyn about what had happened, she was shocked and devastated.

After conducting a thorough analysis of Evelyn's finances, Paul determined that Sardarpour had taken at least \$100,000 from his mother's accounts. When Paul informed Sardarpour of his findings, she responded, "Oh, it's nowhere near that amount of money. It's not even close." Paul also told her that his mother's wallet was missing, along with some of her jewelry. Sardarpour explained that she had taken the jewelry in for cleaning and later came to Paul's office to return some of the missing jewelry and the wallet.

On January 25, 2005, after recovering from a stroke, Evelyn called Paul from the hospital, crying and upset. She told him that Sardarpour had been at the hospital that night and made her sign a document she could not read. She said that Sardarpour told her that if she did not sign the document, Sardarpour's marriage would be over. That document stated:

To Whom It May Concern: I, Evelyn Bekins, confirm that I signed checks to Roya Sardarpour, my caregiver, as gifts. These checks are not her payroll checks and are simply gift [sic] to her. Also, I let her use my credit cards, purchase for me and for herself, again as gift [sic]. I, Evelyn Bekins, have done this with full confidence. Roya Sardarpour has done many good things to me and my late husband and she deserve [sic] all these gifts.

A few months later in June 2005, Evelyn died.

The State charged Sardarpour with one count of first degree theft and one count of first degree identity theft. At trial, the State presented evidence that between May 2003 and March 2005, a total of approximately \$94,000 was deposited into Sardarpour's account from Evelyn's checking account. The State's evidence showed that several checks from Evelyn's account were made out to Sardarpour but that Sardarpour made entries in the check register indicating that they were for Evelyn's

doctors or persons other than Sardarpour. The State's evidence also showed that on 13 separate occasions, a charge was made to Evelyn's Nordstrom credit card followed by a return on that charge that was credited to Sardarpour's credit card account.

The State also presented the testimony of Victoria Noble, a patient who shared the room with Evelyn while she was hospitalized. She testified about the night Sardarpour came to the hospital and asked Evelyn to sign the paper. According to Noble, Sardarpour came into the room that night and told Evelyn that she needed to "have her sign some important papers, it can't wait," and that Evelyn did not seem to understand why. Noble described Evelyn as very confused and testified that Sardarpour spoke in a hushed tone and said something like, "don't you remember all of the checks you gave me permission to use, and charges and gifts." Noble said that Sardarpour then "basically said you need to sign it and put the pen in her hand," and that after Evelyn signed the paper, Sardarpour left in a hurry and Evelyn called her family.

Sardarpour testified on her own behalf and claimed that Evelyn had authorized every check Sardarpour deposited into her account. She asserted that some of the checks were for payroll, some were reimbursements for items she bought for Evelyn, some were for loans, some were for gifts and some were for combinations of reimbursements and gifts, but she did not produce any receipts for the reimbursements. She also identified specific checks as payroll checks but later admitted that she made false entries for these checks. She further claimed that Evelyn allowed her to buy items for herself using Evelyn's Nordstrom credit card. She asserted that these were gifts

from Evelyn, but that they kept them a secret from Evelyn's family because the family was verbally abusive to Evelyn.

The jury found her guilty as charged and returned a special verdict finding that she committed the crimes against a vulnerable person. The trial court imposed an exceptional sentence of 18 months' confinement. Sardarpour appeals.

ANALYSIS

Sardarpour contends she was denied effective assistance of counsel by her attorney's failure to request a jury instruction on the defense of a good faith claim of title. We disagree.

To establish that trial counsel was ineffective by failing to request a jury instruction, the defendant must show that (1) the court would have given the instruction if counsel requested it, (2) that counsel was deficient by failing to request the instruction, and (3) the failure to request the instruction prejudiced the defendant.²

RCW 9A.56.020 provides the defense of good faith claim of title and states:

(2) In any prosecution for theft, it shall be a sufficient defense that:

(a) The property or service was appropriated openly and avowedly under a claim of title made in good faith, even though the claim may be untenable.

Our courts have held that in theft cases where, as here, the mental state is an intent to fraudulently convert property, a defendant who is relying on the good faith claim of title defense "must do more than assert a vague right to property."³ Rather, "the defendant must present evidence (1) that the taking of property was open and avowed and (2) showing circumstances which arguably support an inference that the defendant has

² State v. Johnston, 143 Wn. App. 1, 21, 177 P.3d 1127 (2007).

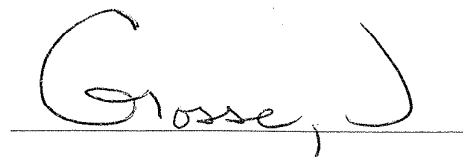
³ State v. Ager, 128 Wn.2d 85, 95, 904 P.2d 715 (1995).

some legal or factual basis for a good faith belief that he or she has title to the property taken.”⁴

There must be evidence other than a defendant’s subjective beliefs; objective evidence must support the defendant’s assertions of a good faith claim of title.⁵

Here, Sardarpour fails to establish that there was evidence that she took the checks and made the credit card purchases “openly and avowedly.” Sardarpour testified that these alleged gifts were kept secret from Evelyn’s entire family and testimony from family members that they knew nothing about the checks and charges corroborated this fact. Sardarpour also admitted that she wrote false entries in Evelyn’s check register for the checks that she deposited into her account to avoid detection. Additionally, family members testified that Evelyn was “devastated” when they told her about the theft. Thus, the evidence does not support an inference that the taking was open and avowed and Sardarpour therefore fails to establish one of the requirements for the good faith claim of title defense.⁶ Accordingly, Sardarpour was not entitled to the instruction and counsel’s failure to request it does not amount to ineffective assistance.

We affirm.

A handwritten signature in cursive script, appearing to read "Grosse", is written over a horizontal line.

WE CONCUR:

⁴ Ager, 128 Wn.2d at 97.

⁵ State v. Chase, 134 Wn. App. 792, 805-06, 142 P.3d 630 (2006); see also State v. Cuthbert, 154 Wn. App. 318, 343-44, 225 P.3d 407 (2010) (defendant’s belief that he was entitled to reimbursements from guardianship fund not supported by sufficient evidence).

⁶ Consequently, we need not determine whether the evidence established the other requirement that she had a good faith belief in the title.

Schiveller, J

Edenfor, J